

the "necessary expense" language of 5 U.S.C. § 4563. To the extent it is inconsistent with this decision, B-114827, Oct. 2, 1974, is hereby modified.⁵

[B-219829]

Appropriations—Fiscal Year—*Bona Fide* Needs for Obligation

The entire amount of the original cost reimbursement contract between the Veterans Administration and the contractor for a needs assessment study of Vietnam-era veterans was properly charged to fiscal year 1984 appropriations, the appropriations available when the contract was executed, since the study was a *bona fide* need of fiscal year 1984.

Appropriations—Fiscal Year—Availability Beyond— Contracts—Modification

Modification of a cost reimbursement contract occurring in fiscal year 1985, which increased the amount of the original contract ceiling price and which did not represent an antecedent liability enforceable by the contractor is properly chargeable to appropriations available when the modification was approved by the contracting officer; that is, fiscal year 1985 appropriations.

Matter of: Proper Fiscal Year Appropriation to Charge for Contract and Contract Increase, July 22, 1986:

A Veterans Administration (VA) certifying officer asks about the proper fiscal year to charge for a cost reimbursement fixed fee contract between the VA and Research Triangle Institute entered on September 12, 1984, for a national needs assessment study of Vietnam-era veterans. He also asks about the proper fiscal year to charge for a contract modification issued on May 20, 1985 providing for an increase of \$218,952 in the contract's cost. For the reasons given below, we find that the full original contract price should have been charged to appropriations for fiscal year 1984, the year in which the contract was executed. We also conclude, however, that the contract modification is properly chargeable to the appropriation available when the modification was approved; that is, to fiscal year 1985 appropriations, since the amount involved exceeds the original contract ceiling price.

Public Law 98-160, 97 Stat. 993, 994-95 (1983), directed the VA Administrator to "provide for the conduct of a comprehensive study of the prevalence and incidence in the population of Vietnam veterans of post-traumatic stress disorder and other psychological problems in readjusting to civilian life * * *." The Act also directed the Administrator to submit to the Senate and House Committees on Veterans' Affairs a report on the results of the study no later than October 1, 1986. Although the legislative history of Public Law 98-160 contains a fairly detailed discussion of the sub-

⁵ We do not "overrule" B-114827 because what we are saying here does not preclude an agency from charging the cost to an applicable "R&R" account if it is so chooses. This decision says merely that charging an "R&R" account is not required.

stance of the study, there is no commentary about how it was intended to be funded.

The VA cost reimbursement contract with the Research Triangle Institute, entered on September 12, 1984, provides that the VA will pay the contractor up to a ceiling contract price of \$3,620,024 for a national needs assessment of Vietnam-era veterans. The contract contained a "Limitation of Funds" clause which by reference established an estimated cost ceiling of \$3,620,024 and provided that once the ceiling was reached, the contractor would be under no obligation to continue performance unless additional funds were allocated to the contract.

The "Statement of Work" describing what is to be done under the contract is quite detailed. Among other things, it establishes a time schedule for the 42 weeks necessary to complete the final report. The Statement provides for progress and other preliminary and interim reports at one month intervals during the first 6 months, and subsequently at 3-month intervals. The Statement makes it clear that the study must meet the requirements of the cited legislation.

After the contract award, the contracting officer issued a series of change orders for additional work under the "changes" clause of the contract. Modification numbers three and five each required obligation of additional funds. Modification number five, the modification mentioned specifically by the certifying officer, modifies the contract to include expanded requirements for the "Pretest" phase. The Statement of Work describes the Pretest in some detail and schedules it for the 10th month of work. This modification increased the contract ceiling amount by \$218,952.

Although neither the VA appropriations acts nor their legislative histories mention the study, we have been informed that, thus far, the contract has been financed from the lump-sum appropriation for "Medical Care" in the fiscal year 1984 appropriations act covering the VA. Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1984, Pub. L. No. 98-45, 98 Stat. 219, 233. This is a 1-year appropriation.

The record suggests that there is a conflict between the VA certifying officer requesting this decision and the VA's Office of General Counsel. The certifying officer maintains that as the contract will take several years to complete, it resembles a continuous service or multi-year contract. In this sense he says it is severable, and application of the *bona fide* need rule would prohibit use of fiscal year 1984 monies to fund the entire contract. Thus, he concludes, the contract should be obligated over the period 1984 through 1988, the period of time described in the "Statement of Work" during which the contract work will be performed. On the other hand, the Office of General Counsel has concluded that the contract is not severable and its entire cost should be funded from fiscal year 1984 funds. The Office of General Counsel also has concluded that the

DECISIONS OF THE COMPTROLLER GENERAL

contract modification in question was within the scope of the original contract and therefore the increase in costs should be charged to fiscal year 1984 funds.

Proper Appropriation to Charge for Original Contract

It is well settled that without express statutory authority, no agency may obligate an appropriation made for the needs of a limited period of time, such as a fiscal year, for the needs of subsequent years. 64 Comp. Gen. 359, 362 (1985). This is a paraphrase of the *bona fide* need rule, which makes appropriations available only to fill a *bona fide* need which exists at the time a contract is executed. See 31 U.S.C. § 1502(a).

Consistent with this rule, we have held that delivery of goods or performance of services in a fiscal year subsequent to the year in which a contract is executed does not preclude charging of earlier fiscal year appropriations with the full cost of the goods or services. The test is whether the goods or services are intended to meet an immediate need of the agency, regardless of when the work under the contract is completed. 60 Comp. Gen. 219, 220 (1981). On the other hand, continuing and recurring services, to the extent the need for a specific portion of them arises in a subsequent fiscal year, do not meet the test. The portion of the services needed in the subsequent fiscal year would be considered "severable" and chargeable to appropriations available in the subsequent year pursuant to a contractual commitment made in that year. *Id.* at 221.

Applying these principles here, we conclude that the entire contract was a *bona fide* need of fiscal year 1984. The service to be provided—that is, preparation of a study on the adjustment needs of Vietnam-era veterans—is to meet an immediate agency need mandated by statute. The fact that the study will not be completed until fiscal year 1988 does not alter this conclusion. This situation is somewhat analogous to contracts for construction of buildings, or other long lead-time items, which are begun in one year, but which may take several years to complete. These contracts usually are considered *bona fide* needs of the year in which the contract is executed, not the year in which the work is completed, see *id.* at 220-21.

We do not think the service contracted for here is severable. The service is to complete the study and to provide a final report to the Congress, nothing less. Although the "Statement of Work" obligates the contractor to provide various interim reports on how the work is progressing, these reports are merely informational and cannot be considered work products that are independent of the study. Furthermore, unlike the National Institutes of Health research grants considered in 64 Comp. Gen. 359, 362-65 (1985), which we suggested were severable since they did not contemplate a required outcome or product, the work here is for a particular

product; that is, the study mandated by Congress. Accordingly, we conclude that the entire original contract amount was properly charged to fiscal year 1984 monies.

Proper Appropriation to Charge for Contract Modification

Consistent with the *bona fide* need rule, in the past we generally have held that where fulfillment of a contract made in an earlier fiscal year required increases in cost in later years, the increased costs were to be charged to the appropriation funding the original contract. This was so because the Government's obligation under the subsequent price adjustment was to fulfill a *bona fide* need of the original fiscal year.¹ See 59 Comp. Gen. 518, 521-22 (1980); 44 Comp. Gen. 399, 401-02 (1965). In 61 Comp. Gen. 609 (1982), however, we modified this position somewhat, concluding that amounts for increases in cost reimbursement contracts that exceed the original contract ceiling price, and which are not based on an antecedent liability enforceable by the contractor, may be charged to funds available when a contract price increase is granted by the contracting officer. 61 Comp. Gen. at 612. We reasoned that although an agency must reserve funds up to the contract's ceiling to comply with the Antideficiency Act's prohibition against incurring obligations exceeding available appropriations, 31 U.S.C. § 1341(a)(1), it is neither required to reserve amounts for cost increases beyond the estimated ceiling nor, in most cases, is it practical to predict the amount of such increases at the time the contract is executed.

In this instance, modification number five was approved in May 1985. The modification increased the original contract amount by \$218,952. Although the modification was based on the original contract—expanding the "Pretest" described in the contract's "Statement of Work"—the increases did not involve an antecedent liability enforceable by the contractor. Since this increase is above the contract ceiling price, we find that it is properly chargeable to appropriations available when the increase was granted by the contracting officer; that is, the 1985 fiscal year appropriation. Similar modifications may be treated accordingly.

[B-222440]

Contracts—Protests—Authority to Consider—Tennessee Valley Authority Procurements

Tennessee Valley Authority (TVA) is subject to the bid protest jurisdiction of the General Accounting Office under the Competition in Contracting Act of 1984 (CICA) since TVA comes within the statutory definition of a federal agency subject to CICA.

¹ We had differentiated, however, new contract liabilities from those which were based on the original contract, holding that the former should be paid from the appropriation available when the new liability was incurred rather than when the original contract was executed. See 55 Comp. Gen. 768 (1976).